Supreme Court, U. S.
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80-723

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. _____

ALFRED PATRICELLI, Pro Se, Petitioner

v.

MECCA LIMITED ET AL, Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Alfred Patricelli, Pro Se
Alfred Patricelli, Pro Se
Counsel for Petitioner

QUESTIONS PRESENTED

Respondent, Mecca Limited et al, filed a suit against the Petitioner, Alfred Patricelli, alleging Trade Mark infringement of the mark "Miss World". The Petitioner had been an independent promoter in the U.S.A. for the "Miss World-U.S.A." contest from 1959 through 1977.

The Petitioner defended Respondent's claim arguing that the Respondent had obtained the mark "Miss World" fraudulently. The genuine issues in this case are the Invalidity of the Respondent's mark "Miss World" and Petitioner's Perpetual Rights.

The Respondent failed to provide the Petitioner with a franchise agreement in 1978. Petitioner had a perpetual franchise right. The District Court Judge Newman in his Ruling On Respondent's Motion For Summary Judgment stated that this issue

must be determined by a trial. (Attached hereto is copy of Judge Newman's Ruling On Plaintiff's Motion For Summary Judgment as Exhibit I).

Petitioner sought a jury trial for determining all questions of fact. Judge Newman granted the Motion in favor of the Respondent. Petitioner used the Trademark for years since 1959. Judge Newman states that the Petitioner is estopped from challenging the validity of the mark "Miss World".

The questions presented are:

1) Whether a franchisee of a Trademark has the right to challenge the validity of the Trademark under which he was franchised from 1959 through 1977 if it had been obtained fraudulently?

2) Whether the existence of contractual documents relating to the perpetual rights of the Petitioner must be heard by a jury when Petitioner produced all

necessary evidence, and Judge Newman stated in his footnotes, "Whether such termination is justified, however, is a question that could only be answered at trial"?

3) Whether the Court of Appeals Second Circuit and the District Court erred in refusing to address themselves to the genuine issue of material fact, The Invalidity of the Respondent's Trademark "Miss World"?

INDEX

Table of Contents

	Page
Jurisdiction	6.
Questions Presented	1,2,3
Statutes and Cases	4,5
Statement	8-19
Reason for Granting the Writ	17,18,19.
Conclusion	19
Appendix	20.- I-V
Statutes	4.
28 U.S.C. 1254 (1)	4,7
Lanham Trademark Act (76 Stat. 771, 15 U.S.C. 1964)	4,14

CITATIONS

Cases	Page
Miss Universe, Inc, v. Alfred Patricelli 408 F.2nd 506 (2nd 1969)	4,9,13,14
Professional Golfers Assn. v. Bankers Life & Cas. Co. 514 F2d 665, 671 (5 Cir. 1975)	4,12
Heaton Distrib. Co. v. Union Tank Car Co. 387 F2nd 477, 482 (8th Cir. 1967)	4,12

	Page
Smith v. Dental Prod. Inc. 140 F2d 140, 148, (7th Cir) Cert. denied 322 U.S. 743 (1944)	5,12
Lear v. Akins - Supreme Court	5,11
Mecca Ltd. et al. v. Alfred Patricelli; B78-31	5,6,9

Note: This civil action was in the Court of Appeals, Docket No. 80-7075. Attorney Howard P. Peck, Esq. is the counsel for Respondent. His address is 850 Third Avenue, New York, N. Y. 10022.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

No.

ALFRED PATRICELLI, Pro Se, Petitioner

v.

MECCA LIMITED ET AL, Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

Alfred Patricelli, Pro Se, Petitioner on his own behalf, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Second Circuit entered in the above case on May 21, 1980 and July 2, 1980.

JURISDICTION

The judgments of the Court of Appeals for the Second Circuit were made and entered on May 21, 1980 and July 2, 1980. Copies thereof are appended to this petition in the Appendix at pp. IV & V. The jurisdiction of this Court is invoked

under 28 U.S.C. 1254(1).

Petition for a rehearing was denied by the Court of Appeals on July 2, 1980.

STATEMENT

The Petitioner had been associated with "Miss World" of London, England from 1959 through 1977.

Unbeknown to Petitioner in 1977, two of the Petitioner's sponsors had contacted Mr. Eric Morley, organizer of the "Miss World" contest in London, England, and offered him a large sum of money for the U.S.A. franchise. These offers gave Eric Morley the idea to get rid of the Petitioner as his franchise holder.

In 1978, the U.S.A. franchise was sold to the B.B.S. Productions, Inc. for $40,000.00. This amount was for 1978 and 1979 franchises. B.B.S. Productions, Inc. was the Petitioner's New York State franchise holder for about 10 years. No franchise holder for "Miss World" ever paid for a franchise since its origin in 1951. The Petitioner, even though he was double-crossed by "Miss World" of

London, England decided to continue staging beauty pageants in America. He used the mark "Miss World-U.S.A.". Petitioner had been given the permission to use the mark "Miss World-U.S.A." as a result of a Court of Appeals decision, Miss Universe, Inc. v. Alfred Patricelli 408 F.2d 506 (2nd Cir 1969).

In March 1978, Mecca Ltd. et al sued the Petitioner for alleged infringement of the mark "Miss World". Petitioner counter-claimed and also requested a trial by jury. (Mecca Ltd. et al. v. Alfred Patricelli B-78-31). On April 5, 1978, Respondent filed a Motion For Summary Judgment.

At a May 11, 1978 hearing, Judge Newman made it very clear to both the Respondent and the Petitioner that the Motion For Summary Judgment would be taken care of very shortly before any other Motions that would be filed by either

party.

Later, at a June 23rd 1978 hearing, Judge Newman asked the Petitioner,"How soon are you ready for a trial"? The Petitioner answered "Tomorrow". Judge Newman said "You are"? Petitioner replied "Absolutely, the most important point of issue at this point is the use of the title "Miss World-U.S.A." During a Court of Appeals hearing on January 9, 1979, the Honorable Judge Irwin Kaufman asked both the Respondent and the Petitioner to request a speedy trial from Judge Newman in this civil action. Both Respondent and Petitioner sent letters to Judge Newman in January 1979 making such request, but Judge Newman did not reply to their letters.

On May 25, 1979, Petitioner took a deposition on Eric Morley of London, England, organizer of the "Miss World"

contest according to due process of law.

It wasn't until December 19, 1979 that Judge Newman issued a Ruling On the Respondent's Motion For Summary Judgement. This Ruling came after 10 other Motions were disposed of, plus a Court of Appeals, plus a deposition in due process of law. During the 17 months' delay on this Ruling, Petitioner was given every indication that a trial by jury was forthcoming.

Judge Newman had failed to follow through on his statements of May 11, 1978 and June 23, 1978 which promised a Ruling on Respondent's Motion before other Motions and which gave Petitioner an indication that trial by Jury would be forthcoming.

Judge Newman granted Respondent's Motion For Summary Judgment and denied Petitioner a trial by Jury.

In the Footnotes of this Ruling, Judge Newman was very inconclusive in his

decision on two genuine issues of material fact: The Invalidity Of Respondent's mark "Miss World", and the Perpetual Rights of the Petitioner.

On one of the genuine issues, Judge Newman stated that the Petitioner is estopped from challenging the invalidity of the Respondent's mark, "Miss World".

The Judge's Ruling on this issue states: "1. Petitioner also argues that Respondend's trademark is invalid. However, having himself made use of the mark as an agent of the Respondent, Petitioner is estopped from contesting its validity. See Professional Golfers' Assn. v. Bankers Life & Cas. Co. 514 F2d 665, 671 (5th Cir 1975). Heaton Distrib. Co. v. Union Tank Car Co. 387 F2nd 477, 482 (8th Cir. 1967). Smith v. Dental Prod. Inc. 140 F2d 140, 148 (7th Cir), cert. denied 322 U.S. 743 (1944)"

Regarding the invalidity of Respondent's

mark, Judge Newman has failed to address himself to the issue.

From 1967 through March 20, 1969, Petitioner was in litigation with Miss Universe, Inc. for alleged infringement of the "Miss U.S.A."mark. On March 20, 1969 the Court of Appeals gave Petitioner permission to use the mark "Miss World-U.S.A." (Miss Universe Inc. v. Alfred Patricelli 408 F2nd 506 (2nd 1969).

On April 5, 1968, the Respondent filed an application with the United States Patent & Trademark Office for the registration of the mark "Miss World" unbeknown to the Petitioner. Copy of this application is hereto attached as Exhibit II.

In March 1978, after Respondent sued Petitioner for alleged infringement, Petitioner made an investigation in filing of the Respondent's mark "Miss World" and discovered that it was

obtained fraudulently by the Respondent. Nowhere in the original application of "Miss World" filed by Respondent, did they mention the litigation of Miss Universe, Inc. v. Patricelli over the use of the mark "Miss U.S.A.-World" and "Miss World-U.S.A." Nor did the Respondend mention that the Petitioner had been using the mark"Miss World" since 1959. Failure of Respondent to mention the above items in their application is a flagrant violation of the United States Patent & Trademark Rules and Regulations.

Due to Respondent obtaining the mark "Miss World" fraudulently, Petitioner has every right to contest the validity of the mark. This right is backed up by the Lanham Trademark Act (76 Stat. 771. 15 U.S.C. 1964) Copy of Lanham Trademark Act is hereto attached as Exhibit III.

Regarding the above cases cited by

Judge Newman in his footnotes, none of them is relevant to this genuine issue because they do not deal with a trade mark obtained fraudulently.

On the second genuine issue of Petitioner's perpetual rights, Judge Newman, in the Footnotes in his Ruling stated, "Mecca asserted that Patricelli's performance had been unsatisfactory which might allow it to terminate on the basis of this condition. Whether such termination would be justified, however, is a question that could only be answered at a trial." Does this statement by Judge Newman need any more explanation? It's clear that a trial by jury should be given to Petitioner. However, Judge Newman denied Petitioner his constitutional rights to a trial by jury.

On March 25, 1980, Petitioner filed an appeal to the Court of Appeals on Judge Newman's Ruling On Respondent's Motion

For Summary Judgment.

On May 21, 1980, the Court of Appeals affirmed Judge Newman's Ruling of December 19, 1979, but in the top left hand corner the Court of Appeals stated, "N.B. Since this statement does not constitute a formal opinion of this Court, and is not uniformly available to all parties, it shall not be reported, cited, or otherwise used in unrelated cases before this or any other Court." Copy of this decision is attached hereto as Exhibit IV.

The Court of Appeals failed to address themselves to the issues, The Invalidity Of The Petitioner's Mark "Miss World", and the Petitioner's Perpetual Rights.

On June 2, 1980, Petitioner filed a Petition for a Rehearing of Judge Newman's Ruling On Respondent's Motion For Summary Judgment.

On July 2, 1980 the Court of Appeals

denied the Petitioner's Petition For Rehearing. Once again, the Court of Appeals failed to address themselves to the genuine issues. They failed to give one single reason for their denial of Petitioner's Petition. Petitioner feels that he deserves some specific conclusive statements from the Court of Appeals and the District Court Judge Newman regarding their denial of a trial by Jury to Petitioner. The Lanham Trademark Act has been completely ignored by Judge Newman and the Court of Appeals. Copy of this decision is attached hereto as Exhibit V.

REASON FOR GRANTING THE WRIT

1. This Court should find the service mark "Miss World" invalid based upon the facts before this Court and should have the mark stricken from the files of the United States Patent and Trademark Office.

2. Public policy demands that all

service marks or trademarks be cancelled and that the alleged owner of such marks should not be allowed to continue to hold an invalid monopoly.

3. The facts surrounding the genuine issues of material fact must not be summarily dismissed but must be fully heard at a trial by jury.

4. Public policy requires that the licensee be allowed to challenge the validity of a mark if it had been obtained fraudulently.

5. The Supreme Court in Lear vs. Akins held that a patent licensee must be allowed to challenge the validity of a Patent under which he is licensed.

a. This bold step forward is now common practice throughout the United States. The same rationale must apply to the validity of a service mark.

6. That this Court reverse the decision of the Court of Appeals

of July 2, 1980.

7. That this Court grant the Petitioner his constitutional right to a trial by jury.

8. That the Petitioner be granted other and further relief as this Court deems necessary and proper.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for the writ of a certiorari should be granted.

Respectfully submitted,

Alfred Patricelli, Pro Se

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APPENDIX

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MECCA LIMITED, ET AL.	:	
		CIVIL NO.
v.	:	B-78-31
ALFRED PATRICELLI, d/b/a MISS WORLD-U.S.A. BEAUTY PAGEANT	:	

RULING ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

This is an action for trademark infringement. Defendant does not dispute that he has used plaintiffs' trademark, "Miss World"; instead, he asserts that he received a lifetime franchise from the plaintiffs permitting that use.[1] Plaintiffs, arguing that no such promise was made, and that the defendant executed a new contract terminating any rights he may have had, moves for summary judgment.

The plaintiffs ("MECCA"), are three jointly owned British corporations which promote the "Miss World" beauty contest.

EXHIBIT I

Mecca grants franchises to one person in each of some eighty nations; these franchises carry with them the right to use the name "Miss World," and to send a contestant to an annual beauty contest held in London. From 1960 to 1977, defendant Alfred Patricelli was the "Miss World" franchisee for the United States. To select his contestant, who bore the title "Miss World-U.S.A.,"[2] Patricelli sponsored an American beauty contest, with contestants representing various states. The state contestants, in turn, were selected by state-wide beauty contests sponsored by sub-franchisees of Patricelli, and these contestants bore the titles "Miss (State) World."

It is Patricelli's position that he was granted a lifetime franchise to select the American contestant for "MissWorld". He bases this contention on a series of letters sent to him by Eric D. Morley,

the then Organizing Director of Miss World, Ltd. Two of these letters state that the Miss World franchise is always offered to the present franchise holder "unless there are very grave reasons." A third states that Mecca anticipates that its association with Patricelli "will continue, all other things being equal, for many years to come." The fourth, and most significant of the letters is dated June 28, 1961, and states in full:

> Just to confirm that unless anything unforeseen happens we shall continue to run Miss World, and whilst you are in a position to provide Miss United States each year in accordance with the rules of our Contest, we shall offer you the franchise.

Mecca, on the other hand, asserts that it granted only a year-to-year franchise to Patricelli, and points to the annual franchise agreements which

Patricelli executed for each of the years between 1960 and 1976. By late 1976, Mecca had become dissatisfied with Patricelli's operation of the American contest and informed him that it would not renew his franchise for 1977. Patricelli responded with a series of letters, insisting that his performance had been satisfactory, and demanding continuation of the francise for another year, on the ground that he had already invested time, labor and his reputation in the 1977 contest. Two of these letters indicated Patricelli's willingness to have his franchise revoked after 1977. In his letter of January 3, 1977, Patricelli wrote: "I have an obligation to finish out the 1977 Contest and I cannot stop now. After that you may do what you desire." The following day, Patricelli wrote again, stating: "I must finish my 1977 contest to avoid all kinds of problems in

the U.S.A. After I'm through, if you so desire, you may give the franchise to anyone you wish who will select a contestant for you in 1978." Mecca finally agreed to give Patricelli the 1977 franchise. The following year, it granted the franchise to a new sponsor.

Patricelli then organized his own, independent beauty contest, and continued to use the designation "Miss World." In response, Mecca moved in this Court for a preliminary injunction to prevent Patricelli's use of this term. This Court granted the motion, based on the likelihood that Mecca would suffer irreparable harm from Patricelli's use of its trademark, and the likelihood that Mecca would succeed on the merits. (June 24, 1978). Patricelli then purported to change the name of his 1978 contest from "Miss World-U.S.A." to "Miss Venus World U.S.A.", and to inform his franchisees running the

state contests for his new venture of this change. However, Mecca returned to this Court with evidence that these state contests were using the name "Miss World", and only occasionally including the additional term "Venus." On the basis of this and other evidence, Mecca moved for a broadened injunction, and also moved to hold Patricelli in civil contempt for violation of the preliminary injunction. This Court denied the contempt motion, but did expand the original preliminary injunction to forbid Patricelli to use the term "World" in connection with any beauty contest. (August 7, 1978).

In the present action for final judgment, Mecca argues that Patricelli's defenses do not raise a triable issue of fact, and moves for summary judgment pursuant to Fed. R. Civ. P. 56. The annual contracts, Mecca argues, indicate that it contemplated a year-to-year, rather

than a lifetime franchise arrangement. In addition, it claims that Patricelli's 1977 letters represent what is in effect a novation, agreeing to terminate the relationship between himself and Mecca in exchange for a commitment to be granted the franchise for the 1977 year. Patricelli argues that a lifetime franchise was created, and that his agreement to terminate it, having been obtained under duress, is void.

Jurisdiction of this action is based on 15 U.S.C. § 1121 and 28 U.S.C. § 1338(a). Patricelli's contract argument is not a federal law question, but it is properly decided by this Court as a defense to the claim of trademark infringement. To determine which substantive law of contracts should govern, this Court must look to Connecticut's choice of law rules. Klaxon Co. v. Stentor Electric Manufacturing Co., 313 U.S.

487 (1941). The Connecticut courts generally interpret contracts according to the law of the place where the contract was made; however, "if the contract is to have its operative effect or place of performance in a jurisdiction other than the place where it was entered into, (Connecticut's) rule is that the law of the place of operative effect or performance governs its validity and construction". Breen v. Aetna Casualty & Surety Co., 153 Conn. 633, 637, 220 A.2d 254, 256-57 (1966); see Arditi v. Dubitzky, 354 F.2d 483, 485 (2d Cir. 1965); Jenkins v. Indemnity Insurance Co. 152 Conn. 249, 253-54, 205 A.2d 780, 782-83 (1964); H. G. Craig & Co. v. Uncas Paperboard Co. 104 Conn. 559, 564-65, 133 A. 673, 675 (1926). All the contracts, or alleged contracts, in the present case were made by mail between England and Connecticut. The operative effect and place of

performance, however, was in the United States, and specifically in Connecticut, where Patricelli had his base of operations. Consequently, the law of Connecticut govern the interpretation of these documents.

There does not appear to be any public policy in Connecticut that would prohibit lifetime contracts of the sort which Patricelli claims was created. Cf. Styles v. Lyon, 87 Conn. 23, 29-30, 86 A. 564, 566 (1913)(enforcing lifetime restrictive covenant against practicing medicine in particular locality); McCullough v. Crown Sheet Metal & Roofing Co., 28 Conn. Supp. 63, 249 A.2d 404 (1968)(rejecting claim of lifetime employment contract, but solely on ground of inadequacy of evidence). Since no Connecticut cases deal directly with the interpretation of such contracts, it may be assumed that the Connecticut courts

would follow generally established principles in deciding this case. See Lee v. Jenkins Bros., 268 F.2d 357, 364 (2d Cir.) cert. denied, 361 U.S. 913 (1959); Capitol Records, Inc. v. Mercury Records Corp., 221 F.2d 657, 662 (2d Cir. 1955). In general, lifetime employment contracts, and possibly lifetime franchise or distributorship contracts, are disfavored by the courts. See Baum Associates, Inc. v. Society Brand Hat Co., 477 F.2d 255 (8th Cir. 1978)(Missouri law); Lee v. Jenkins Bros., supra at 368-69 (using general legal principles to determine Connecticut law); Littell v. Evening Star Newspaper Co., 120 F.2d 36 (1941) (District of Columbia law); 9 Williston on Contracts § 1017 at 131-32 (3d ed. 1967). As the Second Circuit said in Lee, such contracts "have been construed as terminable at will, too indefinite to enforce, ultra vires, lacking in

mutuality or consideration, abandoned or breached by subsequent acts, and the supporting evidence deemed insufficient to go to the jury, as well as made without proper authority." Id. at 368 (footnotes omitted). The question then is whether Mecca can establish, as a matter of law, that the lifetime contract Patricelli claims was made is void on any of these grounds.

The 1961 letter on which Patricelli relies, if it is a contract, is not terminable at will, as a matter of law,[3] particularly since it mentions specific conditions ("whilst you are in a position to provide Miss United States each year").[4] Neither was it ultra vires, and no claim has been made to this effect. The questions of whether it is too indefinite to enforce or lacking in mutuality or consideration are more difficult, however. The 1961 letter does

appear to be rather casually written, particularly when compared to the contracts which Patricelli signed each year; it would not be unreasonable to regard the letter as a vague expression of good will, rather than an enforceable contract. Moreover, if the letter was intended as a contract, it is unclear what the consideration was. Any year-to-year reliance or services would generally provide consideration only for that year's promise, see Baum Associates, Inc. v. Society Brand Hat Co., supra, 477 F.2d at 259; 1 Corbin on Contracts § 96 at 422 (1963), although this rule is more directly applicable to employment contracts than it is to distributorship and franchise agreements, see J.C. Millett Co. v. Park & Tilford Distillers Corp. 123 F. Supp. 484, 492 (N.D. Cal. 1954). In any event, it is impossible for this Court to say, on the basis of the evidence presented,

that Patricelli does not have a triable issue as to whether a lifetime franchise was intended, or whether some adequate consideration for such a franchise was offered. See Maloney v. E.I. Du Pont de Nemours & Co., 352 F.2d 936 (D.C. Cir 1965), cert. denied, 383 U.S. 948 (1966) (claim that oral promise established lifetime employment contract raises triable issue of fact); Thompson v. Miller, 251 Iowa 324, 100 N.W.2d 410 (1960)(claim that distributorship contract was intended to have lifetime duration, even without using term "for life," raises triable issue of fact). Consequently, Mecca is not entitled to summary judgment on these grounds.

Mecca also moves for summary judgment, however, on the ground that Patricelli's letters of January 3 and 4, 1977, which agreed to termination of the franchise in return for Mecca's promise to continue

it for the 1977 year, represented a new contract. There is no question that these letters, by their terms, make such a promise. The only issue is whether there was any consideration given by Mecca that would render such a promise enforceable. If Mecca was obligated to continue the franchise as long as Patricelli could perform, or even for the 1977 year on the basis of Patricelli's reliance. Connecticut courts would hold that Mecca's promise to perform this preexisting legal duty would not constitute adequate consideration. See State National Bank v. Dick, 164 Conn. 523, 529, 325 A.2d 235, 238-39 (1973); Dahl v. Edwin Moss & Son, 136 Conn. 147, 154-55, 69 A.2d 562, 565 (1949).

However, there was considerable uncertainty about the extent of Mecca's legal duty to Patricelli. Mecca's claim that there was no enforceable lifetime

franchise comes close to being accepted as a matter of law, but if the undisputed facts do not go that far, they do establish at a minimum, that the parties were engaged in a genuine dispute about the nature of their contractual obligations, including a dispute as to whether Mecca had any obligation to award Patricelli an annual contract for 1977. Patricelli secured a real benefit by translating the uncertain possibility that a court would enforce the 1961 letter into a definite commitment from Mecca to grant him the 1977 franchise.[5] It has long been recognized that revision of a contract to settle a bona fide dispute constitutes adequate consideration to both parties. Mel Dar Corp. v. C.I.R., 309 F.2d 525, 531-32 (9th Cir. 1962), cert. denied, 372 U.S. 941 (1963); Middlesex Concrete Products & Excavating Corp. v. Northern States Improvement Co.,

129 N.J. Eq. 314, 19 A.2d 48 (1941); Andrew Gulick & Co. v. Cyclemotor Corp., 192 A.D. 350, 182 N.Y.S. 316 (1920); York Metal & Alloys Co. v. Cyclops Steel Co., 280 Pa. 585, 124 A. 752 (1924). Consequently, the two 1977 letters represent a new contract supported by adequate consideration. Since Mecca fully performed its obligation under this contract by granting Patricelli the 1977 franchise, it was entitled not to award him an annual contract for the following year or thereafter.

There being no triable issue of fact on the interpretation or validity of the 1977 letters from Patricelli to Mecca, summary judgment is hereby granted for the plaintiff both on its complaint and on defendant's counterclaim.

Normally, the grant of summary judgment for the plaintiffs would entitle them to have the preliminary injunction

previously entered made permanent. However, the modification of that preliminary injunction contained an extreme prohibition that ought not to be made permanent. The basic relief to which plaintiffs are entitled is an injunction preventing defendant from using the name "Miss World" or "Miss World-U.S.A." or any confusingly similar name. That relief can be accomplished by prohibiting the defendant from using the word "World" immediately following the word "Miss". See Miss Universe, Inc. v. Patricelli, 480 F.2d 506, 510-11 (2d Cir. 1969), rejecting a total prohibition on use of the words "United States" or "U.S.A." but prohibiting use of these words when used contiguously with the word "Miss." The broader relief allowed by this Court when the preliminary injunction was modified was occasioned by evidence of the defendant's conduct and that of his

franchisees in attempting to promote confusion between his "Venus" contest and the "Miss World-U.S.A." contest. The broad relief, prohibiting defendant from making any use of the word "World" in the title of a beauty pageant, is appropriate as a temporary measure until the effects of defendant's improper conduct are likely to be dissipated, but does not need to be made permanent. Of course, plaintiffs could always apply to have the narrower form of relief broadened, if defendant's conduct should warrant return to the total prohibition.

Accordingly, the judgment will include a permanent injunction with the following provisions:

It is hereby ORDERED that

Defendant, his agents, employees, and franchisees, and all those acting in concert with him, are

(1) enjoined until December 31, 1981,

from using the word "World" (whether with all letters, or one or more letters, or no letters capitalized) in the title of any beauty contest or beauty pageant, or in the designation of the prospective or actual winner of such contest or pageant;

(2) permanently enjoined from using the word "World" (whether with all letters, or one or more letters, or no letter capitalized) immediately preceding or immediately following the word "Miss" in the title of any beauty contest or beauty pageant, or in the designation of the prospective or actual winner of such contest or pageant;

(3) permanently enjoined from stating or suggesting, in any oral or written communications, including programs and publicity releases, that the winner of any contest sponsored by defendant or his franchisees is the successor to the winner of any state competition to select

entrants to the "Miss World-U.S.A." contest; and it is further ORDERED that

(4) defendant shall forthwith send copies of this Ruling and injunction by registered mail, return receipt requested, to each of his present franchisees and to any franchisee who is subsequently selected promptly upon such future selection, and

(5) defendant shall, until December 31, 1981, notify plaintiffs of the date and place of every beauty contest or beauty pageant hereafter scheduled by defendant or any of his franchisees within 48 hours after such date and place have been determined.

Dated at Hartford, Connecticut, this 19 day of December, 1979.

/s/ Jon O. Newman
Jon O. Newman
United States Circuit Judge*

*Of the United States Court of Appeals for the Second Circuit, sitting by designation.

FOOTNOTES

1. Defendant also argues that plaintiffs' trademark is invalid. However, having himself made use of the mark as an agent of the plaintiffs, defendant is estopped from contesting its validity. See Professional Golfers Ass'n v. Bankers Life & Cas. Co., 514 F.2d 665, 671 (5th Cir. 1975); Heaton Distrib. Co. v. Union Tank Car Co., 387 F.2d 477, 482 (8th Cir. 1967); Smith v. Dental Prods. Co., 140 F.2d 140, 148 (7th Cir.), cert. denied, 322 U.S. 743 (1944).

2, Mecca and Patricelli previously used the title "Miss U.S.A." However, in previous litigation in this Court, the Miss World contest was preliminarily enjoined from using this term on the basis of another's prior use. Miss Universe, Inc. v. Patricelli, 271 F. Supp. 104 (D. Conn.), aff'd, 386 F.2d 997 (2d Cir. 1967). Mecca and Patricelli then

changed the title to "Miss World-U.S.A.", and this term was found acceptable. Miss Universe, Inc. v. Patricelli, 408 F.2d 506 (2d Cir. 1969).

3. This claim should be distinguished from claims based on an employment or distributorship contract that makes no statement about time, and is arguable terminable, as a matter of law, either at the will of either party, see Atkinson v. Equitable Life Assurance Society, 519 F.2d 1112, 1114 (5th Cir. 1975)(Florida law); P.S. & E. Inc. v Selastomer Detroit Inc., 470 F.2d 125, 127-28 (7th Cir. 1972) (Illinois law), or within a reasonable time, see McGinnis Piano & Organ Co. v. Yamaha International Corp., 480 F.2d 474, 479 (8th Cir. 1973)(Minnesota law); Alpha Distrib. Co. v. Jack Daniel Distillery, Lem Motlow, Prop., Inc., 454 F.2d 442, 449 (9th Cir. 1972) (California law). While contracts providing for

permanent employment are often found to be terminable as well, this finding is a factual one, and depends upon the intention of the parties. See Brown v. Safeway Stores, Inc., 190 F. Supp. 295, 299 (E.D.N.Y. 1960)("The intention to make an offer of life employment or any unusual offer of employment, as gleaned by the plaintiff, must be clear and unequivocal."); 9 Williston on Contracts, supra, § 1017 at 132 ("Agreements of this nature have not been upheld except where the Court is convinced that it was the intent of the parties to enter into such long-range commitments and they must be clearly, specifically and definitely expressed.")

4. Mecca asserted that Patricelli's performance had been unsatisfactory, which might allow it to terminate on the basis of this condition. Whether such termination would be justified, however, is a question that could only be answered

at trial.

5. Patricelli also claims that he wrote these letters under duress. The only possible source of the duress, however, was Mecca's threat to terminate the franchise. This threat, however, was based on Mecca's well-founded belief that it was acting within its rights, and therefore does not constitute duress. See Weiner v. Minor, 124 Conn. 392, 197 A. 691 (1938); Remington Arms Union Metallic Cartridge Co. v. Feeney Tool Co., 97 Conn. 129, 115 A. 629 (1921).

IN THE UNITED STATES PATENT OFFICE

APPLICATION FOR REGISTRATION

OF A TRADEMARK.

295043

Service Mark "MISS WORLD"
Class 107.

TO THE COMMISSIONER OF PATENTS:

MECCA LIMITED, is a corporation duly organised and existing under the laws of Great Britain, having its legal office and doing business at 76 Southwark Street London SE.1 England

APR 9-68 115520E

The above-identified applicant has adopted and is using the Service Mark shown in the accompanying drawing in Great Britain for entertainment services, namely, the conducting of beauty competitions and requests that the said mark be registered in the United States Patent Office on the Principal Register established by the Act of July 5, 1946.

The Service Mark was first used in

the advertising of such services rendered in Great Britain on 1st July 1951; was first used in the advertising of such services rendered in commerce between Great Britain and the United States of America on 1st November 1951; and is now in use in such commerce.

The Service Mark is used as follows: on printed matter in connection with Beauty Competitions
and five specimens showing the mark as actually used are presented herewith.

DECLARATION

Geoffrey Victor Alan Perry, declares that he is the Company Secretary of MECCA LIMITED and is authorized to execute this declaration on behalf of the said Company; he believes the applicant company to be the owner of the mark sought to be registered; that to the best of his knowledge and belief no other person, firm, corporation, or association has the

right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the services of such other person, to cause confusion, or to cause mistake, or to deceive; that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

MECCA LIMITED

By /s/ illegible

Company Secretary

Signed this 1st day of April 1968

POWER OF ATTORNEY

Applicant hereby appoints Glascock, Downing & Seebold, National Press Building, Washington, D.C. 20004 (Registration No. 13992) to prosecute this application to register, to transact all business in the Patent Office in connection therewith, and to receive the Certificate of Registration.

APPOINTMENT OF DOMESTIC REPRESENTATIVE

JOHN C. HOLMAN, whose postal address is National Press Building, Washington, D.C., is hereby designated applicant's representative upon whom notices or process in proceedings affecting the mark may be served.

MECCA LIMITED,

By /s/ illegible

Company Secretary

Signed this 1st day of April 1968

LANHAM TRADE-MARK ACT[1]

(Public Law 489, 79th Congress, Approved July 5, 1946 (60 Stat. 433, as amended; 15 U.S.C. 1064), as amended by Public Law 87-772, 87th Congress, approved October 9, 1962 (76 Stat. 771; 15 U.S.C. 1064).)

AN ACT to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes.

CANCELLATION OF A REGISTRATION[2] (76 Stat. 771; 14 U.S.C. 1964).

SEC. 15. A verified petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by

this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905 -

(a) within five years from the date of the registration of the mark under this Act; or

(b) within five years from the date of publication under section 12 (c) hereof of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or

(c) at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsections (a), (b), or (c) of section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark

is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used.

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[1]Sec. 14 of this Act, as amended, relates to the Federal Trade Commission Public Law 87-772, approved October 9, 1962 (76 Stat. 771) amended Section 14 of said Act (Public Law 489) by striking said Sec. 14 in its entirety and inserting, in lieu thereof, Sec. 14 as set forth above.

[2]The Caption has been inserted by the editors of this compilation.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other Court.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-first day of May, One Thousand Nine Hundred and Eighty.

Present: HONORABLE J. EDWARD LUMBARD,
HONORABLE WALTER R. MANSFIELD,
HONORABLE WILLIAM H. MULLIGAN,
Circuit Judges.

- -x

EXHIBIT IV
1.

- -X

MECCA LIMITED, MECCA PROMOTIONS LIMITED and MISS WORLD LIMITED, each being an English Limited Company,

Plaintiffs-Appellees,

-against- Dkt. No. 80-7075

ALFRED PATRICELLI, doing business as MISS WORLD-U.S.A. BEAUTY PAGEANT,

Defendant-Appellant.

- -X

Alfred Patricelli, pro se defendant in this action to enjoin him from using plaintiffs' registered trademark "Miss World" and variations thereof in the title of any beauty contest, appeals from a judgment of the United States District Court for the District of Connecticut entered by Judge Jon O. Newman (sitting by designation) on December 26, 1979, upon plaintiffs' motion for summary judgment (1) enjoining Patricelli until December 31, 1981, from using the word "World" in the title of any beauty contest or in the designation of a winner of such a

contest, (2) permanently enjoining him from using "World" immediately preceding or following the word "Miss" in any such contest or from suggesting that the winner of any contest sponsored by him or his franchisees is a successor to the winner of any state competition to select entrants to the "Miss World-U.S.A." contest, and (3) granting other related relief.

The judgment of the district court is affirmed, substantially for the reasons set forth in Judge Newman's well-reasoned and carefully considered opinion dated December 19, 1979. Patricelli's further argument that his use of the marks "Miss World-U.S.A." and "Miss Venus World-U.S.A." was authorized by our decision in Miss Universe Inc. v. Patricelli, 408 F.2d 506 (2d Cir. 1969), must be rejected for the reasons that plaintiffs here were

neither parties to that litigation nor bound by it and that we did not therein decide any rights as between Patricelli and others (such as plaintiffs here) to use the title description for selection of a representative to the World Beauty Pageant in London.

/s/ J. Edward Lumbard,

J. Edward Lumbard, U.S.C.J.

/s/ Walter R. Mansfield,

Walter R. Mansfield, U.S.C.J.

/s/William H. Mulligan

William H. Mulligan, U.S.C.J.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a State Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the second day of July, one thousand nine hundred and eighty.

Present:

HON. WALTER R. MANSFIELD

HON. WILLIAM H. MULLIGAN

HON. J. EDWARD LUMBARD

Circuit Judges

MECCA LIMITED, MECCA PROMOTIONS LIMITED and MISS WORLD LIMITED, each being an English Limited Company	x
Plaintiffs-Appellees	x
V	80-7075
ALFRED PATRICELLI, doing business as MISS WORLD-U.S.A. BEAUTY PAGEANT	x
Defendant-Appellant	x

EXHIBIT V

A petition for a rehearing having been filed herein by defendant-appellant pro se.

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

/s/ A. Daniel Fusaro
A. Daniel Fusaro, Clerk

AFFIDAVIT

Alfred Patricelli, being duly sworn, deposes and says as follows:

Three copies of a Writ of Certiorari to the United States Supreme Court were mailed first-class, postage prepaid, to Atty. Howard P. Peck, Esq., Counsel for Respondent, c/o Davis & Gilbert, Attys. At Law, 850 Third Avenue, New York, N.Y. 10022 this 10th day of October 1980.

City of Bridgeport
County of Fairfield October 6, 1980

Personally appeared, Alfred Patricelli, signer of this instrument and made oath to the truth of all statements.

By: Alfred Patricelli, Pro Se

Alfred Patricelli, Pro Se
Petitioner, Pro Se
59 Cannon Street, Suite 4
Bridgeport, Conn. 06604
Tel. 1-203-576-9787

Notary

My Commission Expires April 1, 1981